

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

04-2000 (L), 04-2298 05-1169
Arrowhead Global v. Datapath, Inc.
(Hilton)

05-1203
Adeoye v. Gonzales

NATURE OF CASE

ARBITRATION. Whether district court erred in confirming an interim award.

IMMIGRATION. Does the court have jurisdiction to review motion to reconsider when it would have lacked jurisdiction to review the underlying order; impact of the REAL ID Act.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

TUESDAY, NOVEMBER 29, 2005

REVD 11/9/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1716

Menghesha v. Gonzales

IMMIGRATION. Whether the evidence compels a finding that alien eligibility for asylum and withholding of removal.

03-1613

Eriline Company S.A. v. James P. Johnson
(Thornburg)

CIVIL PROCEDURE. Whether the district court may sua sponte raise the affirmative defense of the statute of limitations.

05-1278 (L), 05-1421

MEC Construction Inc v. NLRB

LABOR. Whether three ballots in union election were cast by ineligible voters.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
9:30 a.m.

TUESDAY, NOVEMBER 29, 2005

REVD 11/23/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1106

In Re: Ashton Wray
(Morgan)

CIVIL. Whether the willful failure to pay income taxes constitutes a "serious crime," as defined within the Federal Rules of Disciplinary Enforcement, Rule I.B.

05-1482

Waterhouse v. RJ Reynolds Tobacco
(Messitte)

CIVIL. Whether court properly granted summary judgment in action alleging failure to warn about the dangers of smoking.

05-1297

Baltimore Sun Co v. Ehrlich
(Quarles)

CONSTITUTIONAL LAW. Whether state Governor's directive to state officials to not provide information to two newspaper reporters violates the First Amendment.

05-1331

Norfolk Dredging Co v. Wiley
(Smith)

ADMIRALTY. Whether the district court erred in dissolving injunction and stay under the Limitation of Liability Act.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
9:30 a.m.

TUESDAY, NOVEMBER 29, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1054

French v. Liebmann
(Nickerson)

BANKRUPTCY. Whether the presumption against extra-territoriality bars the application of Section 548 to avoid transfer of property outside the United States.

05-1398

Abovenet v. 1807 Faraday Court
(Lee)

CONTRACTS. Whether lessee of commercial property had a right to the return of a restoration escrow deposit.

04-1327

Tewabe v. Gonzales

IMMIGRATION. Whether the Immigration Judge's negative credibility finding is supported by substantial evidence.

04-6025

US v. Hackley
(Payne)

POST-CONVICTION RELIEF. Whether the government withheld or failed to disclose evidence.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

TUESDAY, NOVEMBER 29, 2005

REVD 10/13/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1257 (L), 05-1348
Morrison v. Bd of Law Examiners
(Boyle)

CONSTITUTIONAL LAW. Whether state's comity requirement for admission to practice law without examination violates equal protection and privileges and immunities clause.

05-1463
Mazuz v. State of MD
(Messitte)

CIVIL RIGHTS. Challenge to denial of qualified immunity to police detective for executing a search warrant on the wrong room in state university dormitory.

04-2276
US v. Rachel
(Nickerson)

GOVERNMENT CONTRACTS. Whether appellants, as vendor or subcontractor to prime contractor, inflated prices for computer repair kits in violation of False Claims Act; numerous other issues.

05-1174
Afeta v. Gonzales

IMMIGRATION. Whether alien qualifies for derivative U. S. citizenship under 8 U.S.C. Section 1432(a) (1994).

PANEL V
COURTROOM FIVE
Courthouse Annex Room 223
9:30 a.m.

TUESDAY, NOVEMBER 29, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

05-1352
Craddock v. Apogee Coal Company
(Goodwin)

04-4195
US v. Maurice A. Parker
(Chasanow)

NATURE OF CASE

COAL MINER BENEFITS. Whether state court judgment on retiree health benefits constitutes res judicata; whether state law claims are preempted by LMRA or ERISA.

CRIMINAL LAW & PROCEDURE. Admission of evidence of prior gun possession under Fed. R. Evid. 404(b); sentencing issue.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:00 a.m.

WEDNESDAY, NOVEMBER 30, 2005

REVD 11/23/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-32

Hedrick v. True
(Wilson)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

03-4083

US v. Gerome M. Gordon
(Messitte)

CRIMINAL. Whether sentencing court properly determined drug quantity following defendant's guilty plea without a plea agreement.

04-2274

WMATA v. Local 2
(Cacheris)

ARBITRATION. Challenge to enforcement of arbitration decision in labor dispute.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
9:00 a.m.

WEDNESDAY, NOVEMBER 30, 2005

REVD 11/23/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-2428

Gandziami-Mickhou v. Gonzales

IMMIGRATION. Propriety of denial of asylum, withholding of removal, and protection under the Convention Against Torture.

05-1536

Trumball Investments v. Wachovia Bank NA
(Lee)

CONTRACTS. Whether bank is liable under discretionary investment account agreement for failing to comply with oral trading instructions given by account holder.

05-4252

US v. Jaime O. Baldovinos
(Voorhees)

INEFFECTIVE ASSISTANCE. Whether ineffective assistance of counsel conclusively appears on the face of the record; other issues.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
9:00 a.m.

WEDNESDAY, NOVEMBER 30, 2005

REVD 11/23/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1363

Gibson v. Boy Scouts of Amer
(Lee)

DAMAGES. Whether district court erred in denying plaintiff compensatory and punitive damages, and attorney's fees after awarding him injunctive relief for being expelled from Scoutmaster position with the Boy Scouts.

04-2335

Convey Compliance v. 1099 Pro Inc
(Lee)

CONTRACTS. Whether defendant breached covenant not to sue; attorney's fees.

04-2348 (L), 04-2356 04-2357 04-2424

Payne v. Brake
(Moon)

FEDERAL JURISDICTION. Whether case was properly removed to federal court; challenge to dismissal without prejudice after district court determined that the case was time-barred.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

WEDNESDAY, NOVEMBER 30, 2005

REVD 11/23/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1497

Sea B Mining Company v. Dunford

BLACK LUNG BENEFITS. Whether Sea B Mining established rebuttal of the presumption of entitlement to benefits under 20 C.F.R. Section 727.203(b) (3) (4); whether ALJ properly determined start date of eligibility.
15 mins. per side

04-2244

Helsabeck v. Fabyanic
(Conrad)

CIVIL RIGHTS. Challenge to special interrogatory to jury on issue of qualified immunity; other issues.

05-1191

Alvey v. Ball Corporation
(Stamp)

LABOR MANAGEMENT RELATIONS ACT. Whether challenge to employer's search of employees' lockers fell within the terms of the collective bargaining agreement's grievance procedures.

PANEL V
COURTROOM FIVE
Courthouse Annex Room 223
9:00 a.m.

WEDNESDAY, NOVEMBER 30, 2005

REVD 11/23/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1273

Dockser v. Schwartzberg
(Messitte)

ARBITRATION. Whether the district court lacked jurisdiction to determine number of arbitrators to be used at arbitration.

05-1392

Wilson v. Draper & Goldberg
(Quarles)

FAIR DEBT COLLECTION ACT. Whether law firm was a trustee foreclosing on property and exempt from the Act.

05-1002

Higuit v. Gonzales

IMMIGRATION. Whether court has jurisdiction over challenge to denial of adjustment of status in light of REAL ID Act of 2005.

04-2395

Zimunya v. Gonzales

IMMIGRATION. Whether the Court retains jurisdiction to review the Board's denial of petitioner's request for reinstatement of voluntary departure in light of the REAL ID Act of 2005.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

THURSDAY, DECEMBER 1, 2005

REVD 11/2/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1155

Teamsters Local 391 v. Ball Corporation
(Tilley)

LABOR MANAGEMENT RELATIONS ACT. Challenge to summary judgment in action under collective bargaining agreement seeking additional payments under gainsharing plan.

04-1036 (L), 04-2242 04-2465

Humphrey v. Humphrey
(Hilton)

CIVIL. Whether the district court applied an improper burden of proof; assuming error, whether error is subject to harmless error review.

05-1143

Hogan v. England
(Brinkema)

PRIVACY ACT. Whether agency violated the Act by failing to collect information concerning misconduct directly from employee.

04-2340

Donnell v. Metropolitan Life
(Spencer)

ERISA. Whether district court properly granted summary judgment for denial of disability benefits.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
9:30 a.m.

THURSDAY, DECEMBER 1, 2005

REVD 11/29/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-6214

US v. Erskine L. Hartwell
(Payne)

CRIMINAL LAW & PROCEDURE. Whether district court erred in allowing government to withdraw its Fed. R. Crim. P. 35(b) motion; other issues.

05-1432

Davani v. Clement
(Hilton)

FEDERAL JURISDICTION. Whether federal court review of claims presented initially before a state ALJ is barred by the Rooker-Feldman doctrine, res judicata or collateral estoppel.

05-1009

Choice Hotels Intl v. Sonora Sun Mgmt
(Williams)

CIVIL. Whether the district court properly denied Sun Management's motion to vacate a "confessed judgment"; propriety of declaratory judgment regarding franchise agreement.

05-1150

Q International v. Smoak
(Brinkema)

CIVIL. Whether tort action is barred by res judicata after adjudication of contract action arising out of the same facts.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
9:30 a.m.

THURSDAY, DECEMBER 1, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1382

Estate of Rodgers v. Smith
(Howard)

CIVIL RIGHTS. Whether decedent was "seized" by police officer prior to his shooting death; qualified immunity.

05-1284

Short v. Smoot
(Wilson)

CIVIL RIGHTS. Challenge to denial of qualified immunity in action arising out of inmate's suicide.

05-1299

Hines v. Barnhart, Comm
(Boyle)

SOCIAL SECURITY. Whether substantial evidence supports ALJ's decision that claimant is not disabled.
15 mins. per side

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

THURSDAY, DECEMBER 1, 2005

REVD 11/23/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1003

Johnny's Enterprises v. Prudential Secur
(Norton)

TORTS. Whether defendant breached a fiduciary duty to plaintiff in its handling of brokerage account; other issues.

05-1051

Conner v. US
(Wilson)

TAX. Challenge to denial of motion to quash two IRS summonses issued to third-party recordkeepers.

05-1242

Jacksonville Airport v. Michkeldel Inc
(Williams)

BANKRUPTCY. Whether creditor's vote against plan confirmation was properly disallowed.

05-1505

Testerman v. Riddell Inc
(Kiser)

TORTS. Challenge to summary judgment and exclusion of expert testimony in action arising out of injury allegedly caused by negligently fitted football shoulder pads.

PANEL V
COURTROOM FIVE
Courthouse Annex Room 223
9:30 a.m.

THURSDAY, DECEMBER 1, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-7726

Michau v. Charleston County
(Blatt)

42 U.S.C. Section 1983. Whether person civilly committed as sexual predator after sentence has expired is a "prisoner," as defined in 28 U.S.C. Section 1915(h); propriety of district court's dismissals without prejudice under 28 U.S.C. Sections 1915(e)(2), 1915A. 10 mins. per side

04-4609

US v. Efrain Rodriguez
(Hilton)

SENTENCING GUIDELINES. Whether district court erred in applying enhancement of USSG Section 2L1.2(b)(1)(A)(ii) for a prior conviction of a crime of violence.

03-4976

US v. Hassan R. Miller
(Currie)

CRIMINAL/SENTENCING GUIDELINES. Whether a judicially-enhanced sentence should be recognized as plainly erroneous where sentence ran partly concurrent with prior sentence.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
8:30 a.m.

FRIDAY, DECEMBER 2, 2005

REVD 11/15/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

04-4224 (L), 04-4225
US v. Jason Milam
(Goodwin)

04-5016
US v. Marvin Lundy
(Howard)

04-4136
US v. Thomas E. Uzenski
(Howard)

NATURE OF CASE

CRIMINAL LAW & PROCEDURE. Whether the district court's drug quantity determination was plain error in light of Booker.

CRIMINAL LAW & PROCECURE. Whether sentencing issue under United States v. Booker, 125 S. Ct. 738 (2005) was preserved for appeal by the district court in light of the appeal waiver in plea agreement; other issues.

CRIMINAL LAW & PROCEDURE. Sufficiency of the evidence to support convictions for making and possessing destructive devices; other issues.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
8:30 a.m.

FRIDAY, DECEMBER 2, 2005

REVD 11/23/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

05-4437 (L), 05-4533
US v. Vincent C. Eura
(Payne)

CRIMINAL. Challenge to search and seizure; whether sentence below guideline range was "unreasonable."

04-4385 (L), 04-4550
US v. William L. Foster
(Motz)

CRIMINAL LAW & PROCEDURE. Whether remarks by arresting officer concerning firearm were reasonably likely to elicit incriminating evidence under totality of the circumstances and prejudice resulted.

04-2243
Formica v. Prudential Insurance
(Messitte)

ERISA. Whether plan gave discretionary authority to administrator to determine benefit eligibility.

05-1178
McKinnon v. Lincoln Benefit Life
(Wooten)

INSURANCE. Interpretation of "suicide exclusion" term of life insurance policy under South Carolina law.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
8:30 a.m.

FRIDAY, DECEMBER 2, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

05-4401

US v. Millis S. Bryson
(Thornburg)

CRIMINAL LAW & PROCEDURE. Whether supervised release term had expired, leaving court without jurisdiction to revoke supervised release.

05-4476 (L), 05-4571

US v. Brian Moreland
(Goodwin)

CRIMINAL. Whether downward departure from advisory sentencing guideline range was unreasonable; denial of disclosure of grand jury information; search and seizure.

05-1118

Pulley v. KPMG Consulting Inc
(Titus)

EMPLOYMENT DISCRIMINATION. Propriety of summary judgment in favor of employer on claims of racial discrimination and retaliation.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
** 8:15 a.m. **

FRIDAY, DECEMBER 2, 2005

REVD 12/1/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(11/29/2005 - 12/02/2005 Session)

NUMBER AND STYLE

05-4236 (L), 05-4246
US v. Carlton Keith Roper
(Thornburg)

04-4444
US v. Jean Andrew McKinney
(Keeley)

NATURE OF CASE

SENTENCING. Challenge to remission of restitution and
special assessment upon revocation of supervised release.

CRIMINAL LAW & PROCEDURE. Propriety of evidentiary rulings;
motion for mistrial; sentencing enhancements.

PANEL V
COURTROOM FIVE
Courthouse Annex Room 223
8:30 a.m.

FRIDAY, DECEMBER 2, 2005

REVD 11/15/05